

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE RIVERA; CARMEN MARTINEZ,

No. 2:22-cv-0346 DJC DB PS

Plaintiffs,

ORDER

v.

CALIFORNIA COMMUNITY HOUSING AGENCY, et al.,

Defendants.

Plaintiffs are proceeding in this action pro se. The matter was referred to a United States Magistrate Judge pursuant to Local Rule 302(c)(21).

On June 20, 2023, the Magistrate Judge filed Findings and Recommendations herein which were served on all parties and which contained notice that any objections to the Findings and Recommendations were to be filed within fourteen days after service of the Findings and Recommendations. Plaintiffs have filed objections to the Findings and Recommendations.

The Court has reviewed the file and finds the Findings and Recommendations to be supported by the record and by the Magistrate Judge's analysis. However, given the information provided by the Plaintiff in his Opposition to the Motion to

1 Dismiss (ECF No. 22) and the Objections to the Findings and Recommendations (ECF
2 No. 28), the Court concludes Plaintiff should be given one further opportunity to
3 amend his complaint to assert a claim for wrongful use of civil proceedings, which as
4 the Magistrate Judge observed, is likely the more proper cause of action than
5 malicious prosecution which requires an arrest or prosecution that is not at issue in
6 this case. As noted by the Magistrate Judge, to allege such a claim plaintiffs must
7 establish that: (1) the defendants were actively involved in bringing a lawsuit against
8 plaintiffs; (2) the lawsuit ended in plaintiffs favor; (3) no reasonable person in
9 defendants' position would have believed there were reasonable grounds to bring the
10 lawsuit; (4) defendants acted primarily for a purpose other than succeeding on the
11 merits; and (5) defendants' conduct was a substantial factor in causing harm to
12 plaintiffs. (ECF No. 27 at 6 (citing *Acres Bonusing, Inc. v. Ramsey*, Case No. 19-cv-
13 5418-WHO, 2022 WL 17170856, at *5 (N.D. Cal. Nov. 22, 2022).)

14 The Plaintiff is reminded the Magistrate Judge's previous admonition that Local
15 Rule 220 requires that any amended complaint be complete in itself without reference
16 to prior pleadings, and that it will supersede any prior complaints in this matter.
17 Therefore, plaintiff must include all allegations that would support a claim for wrongful
18 use of civil proceedings. All other claims are dismissed with prejudice, and the Court
19 adopts the analysis stated in the Magistrate Judge's Findings and Recommendations.
20

21 CONCLUSION

22 Accordingly, IT IS HEREBY ORDERED that:

23 1. The Findings and Recommendations filed June 20, 2023 (ECF No. 27) are
24 adopted in part;

25 2. Defendants' February 16, 2023 Motion to Dismiss (ECF No. 20) is granted;

26 3. The Second Amended Complaint filed January 23, 2023 (ECF No. 19) is
27 dismissed with leave to amend; and

28 4. Plaintiff is granted thirty days from the date of service of this order to file an

1 amended complaint that complies with the requirements of the Federal Rules of Civil
2 Procedure, and the Local Rules of Practice limited to a cause of action for wrongful use
3 of civil proceedings ONLY. Failure to file an amended complaint in accordance with
4 this Order may result in this action being dismissed.

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7 IT IS SO ORDERED.

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Dated: September 29, 2023

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Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE